

#### REMARKS/ARGUMENTS

The Examiner rejected claims 1-3, 5-17, 19-31, and 33-42 as obvious (35 U.S.C. §103) over Bare (2003/0016624) in view of Hatakeyama (U.S. Patent No. 6,542,468) and Kinjo (U.S. Patent No. 6,944,684). Applicants traverse for the following reasons.

Amended claims 1, 15, and 29 concern selecting one of multiple data paths to a device, and require: selecting one of multiple paths indicated as enabled to transmit data, wherein a path is indicated as enabled or disabled; gathering transfer time data for multiple transfer sizes for each enabled path capable of being selected, wherein the transfer size is a size of the data being transferred in one transfer operation; determining one path currently indicated as enabled to be selected to transfer data for a given transfer size that has transfer time data for the given transfer size satisfying a threshold transfer time; and indicating the determined path as disabled for the given transfer size, wherein paths indicated as disabled for given transfer sizes are not capable of being selected to use to transmit data having the given transfer size, wherein one path is capable of being concurrently indicated as disabled for a first transfer size and enabled for a second transfer size.

Applicants amended these claims to require that a determination is made of one path currently indicated as enabled to be selected to transfer data for a given transfer size that has transfer time data for the given transfer size satisfying a threshold transfer time.

The Examiner cited col. 3, lines 29-38 of Kinjo with respect to the claim requirement of indicating paths as disabled for a given transfer size, wherein one path is enabled for one transfer size and disabled for another. (Final Office Action, pg. 4) Applicants submit the Examiner intended to cite col. 2, lines 29-38 which appears to describe the section of Kinjo the Examiner references, not col. 3.

The cited col. 2 of Kinjo discusses how a first communication path is used for a smaller first transfer size, less than a predetermined size, and a second communication path is used for a larger second transfer size, greater than the predetermined size. The cited Kinjo describes how paths are dedicated to a specific transfer size. However, the claims require that a path enabled for a given transfer size is disabled for the given transfer size. Nowhere does the cited Kinjo teach or suggest that a path currently enabled for a given transfer size is disabled for that given transfer size. In other words, the Examiner has not cited any part of Kinjo that teaches that the first communication path used for the smaller first transfer size would be disabled for the first

transfer size if the transfer time data on the first path fort he first transfer size satisfies a threshold. Instead, the cited Kinjo appears to provide a static assignment of each of the first and second paths to a specific transfer size, and not disabling a path with respect to a transfer size to which it is currently enabled.

In the Response to Arguments, the Examiner stated that “[o]ne ordinary skill in the art at the time of the invention knows that exceeding the threshold of the transfer size and deselecting it and selecting a path with a higher transfer size is also interpreted as disabling the for the given transfer size upon reaching certain threshold”. (Final Office Action, pg. 9)

The Examiner appears to take the position that deciding to use a first path for a first transfer size and second path for a second transfer size effectively disables the first path for the second transfer size. Applicants submit that the claims have an additional requirement beyond this characterization and that is that the path indicated as disabled for the given transfer size was previously enabled for a given transfer size. Nowhere does Kinjo teach or suggest that a path currently enabled for a transfer size be disabled for that transfer size.

Applicants further submit that the cited art does not teach the added claim requirement of determining one path currently indicated as enabled to be selected to transfer data for a given transfer size that has transfer time data for the given transfer size satisfying a threshold transfer time. The cited Kinjo discusses using different paths for different transfer sizes, but nowhere teaches determining a path indicated as enabled for a given transfer size that has transfer time data for the given transfer size satisfying a threshold transfer time.

Moreover, the Examiner mentions disabling a path for the given transfer size upon reaching a certain threshold, but has not cited any art teaching this requirement. For instance, although Kinjo mentions that paths are assigned to different transfer sizes, the Examiner has not cited any part of Kinjo or the other that that teaches disabling a determine path for a given transfer size, or disabling one of the first or second paths for their assigned first and second transfer sizes if they have a transfer time for their given first and second transfer sizes that satisfies a threshold transfer time. There is no teaching or suggesting of disabling an active path for a given transfer size if the transfer time for that given transfer size satisfies a transfer time threshold.

For instance, the Examiner has not shown where Kinjo mentions that the first path handling the first transfer size was previously assigned to handle the second transfer size, but that

assignment to the second transfer size was disabled upon determining that the transfer time the first path experienced for the second transfer size satisfied a transfer time threshold.

If the Examiner maintains this rejection, Applicants request that the Examiner show where Kinjo or any other reference teaches or suggests that determining a currently enabled path having a transfer time for a given transfer size exceeding a threshold and then indicating that that determined path is disabled. The cited Kinjo only mentions one path enabled for one transfer size, and does not teach or suggest disabling an enabled path for a given transfer size when the transfer time for the given transfer size satisfies the threshold.

Accordingly, claims 1, 15, and 29 are patentable over the cited art because the requirements of these claims are not taught or suggested in the cited art.

Dependent claims 2-3, 14, 16, 17, 19-28, and 30-42 are patentable over the cited art because they depend from one of claims 1, 15, and 29, which are patentable over the cited art for the reasons discussed above. Moreover, certain of the below discussed dependent claims provide additional grounds of patentability over the cited art.

Claims 2, 16, and 30 depend from claims 1, 15, and 29 and further require indicating one disabled path as enabled after performing a threshold number of transfer operations. The Examiner cited col. 5, lines 37-42 of Hatakeyama as teaching the additional requirements of these claims. (Final Office Action, pg. 5). Applicants note that the Examiner cited this same section of Hatakeyama in the previous office action. Applicants traverse for the following reasons.

The cited col. 5 mentions a method for selecting a path of data transmitted from a source to a destination node, and a network path of data returned from the transmission destination node in an environment where nodes are distributed and located via a network.

Nowhere does this cited col. 5 anywhere teach or suggest the claim requirement of indicating one disabled path as enabled after performing a threshold number of transfer operations.

Moreover, the cited Hatakeyama teaches away from enabling a path after a threshold number of transfer operations as claimed because Hatakeyama discusses a selection method that estimates the response time of a path to select a path with the minimum estimated response time. (Hatakeyama, col. 5, line 37 to col. 6, line 5) Thus, Hatakeyama discusses a method for selecting a path that is different from the claimed selection after a threshold number of transfer

operations are performed. In this respect, the cited Hatakeyama teaches away from the claim requirement of enabling after a threshold number of operations.

Applicants submit that the cited Hatakeyama's discussion of selecting the optimum path to use based on response data does not disclose the specific claim requirement of indicating a disabled path as enabled after performing a threshold number of operations. If the Examiner maintains the rejection of this claim, Applicants request that the Examiner specifically address the Applicants' above argument that the cited col. 5 does not teach or suggest indicating one disabled path as enabled after performing a threshold number of transfer operations, and cite to the specific sections of the art that teach or suggest this particular claim requirement.

Accordingly, claims 2, 16, and 30 provide additional grounds of patentability over the cited art.

Amended claims 3, 17, and 31 depend from claims 2, 16, and 30 and further require that the path indicated as disabled is disabled for a first threshold number of transfer operations if the transfer data time for the path satisfies a first threshold and is disabled for a second threshold number of transfer operations if the transfer data time for the path satisfies a second threshold.

Applicants amended these claims to clarify the claim language and relate the disabling to the path indicated as disabled.

The Examiner cited col. 11, lines 32-47 of Hatakeyama as teaching the additional requirements of these claims. (Final Office Action, pg. 5) Applicants note that the Examiner cited this same section of Hatakeyama in the previous office action. Applicants traverse for the following reasons.

The cited col. 11 mentions an "RIR" which is a most recent influence rate index indicating how much difference exists between the time at which an actual response time is measured and the time at which the degree of fitness is calculated. A positive constant is a value obtained by subtracting the actual response time measured from the time at which RIR is used. A "DRTi" is an absolute value of the difference between the estimated response time of the time point at which the *i*th actual response time is measured.

The cited col. 11 discusses the parameters for a degree of fitness calculation which is a degree for determining how accurately the response time of a service request can be estimated. (Col. 11, lines 15-25). Nowhere does this cited section concerning the "degree of fitness" anywhere teach or suggest the claim requirement of disabling the path for a first threshold

number of transfer operations if the path has a transfer data time satisfying a first threshold and disabling the path for a second threshold number of transfer operations if the path has a transfer data time satisfying a second threshold.

Nowhere in the cited col. 11 is there any teaching, suggestion or mention of disabling paths for first and second threshold number of transfer operations as claimed. Instead, the cited col. 11 concerns calculating a “degree of fitness”, which is a degree for determining how accurately the response time of a service request can be estimated.

In the Response to Arguments and Advisory Action, the Examiner further cited col. 10, line 51-60 of Hatakeyama as teaching the requirements of these claims. (Final Office Action, pgs. 9-10 and Advisory Action, pg. 2) Applicants traverse.

The cited col. 10 mention that a path calculating unit requests an optimum estimation individual and an actual response time, and can adjust the timing at which it requests the estimation individual. Hatakeyama further notes that the path calculating unit obtains the estimated response time of each of the paths by using the estimated individual and actual response time. (Col. 15, lines 45-60).

Applicants submit that the cited Hatakeyama’s discussion of calculating a response time for paths and calculating a degree of fitness does not teach or suggest the specific claim requirement of disabling paths for first and second threshold number of transfer operations as claimed. Applicants submit that disabling a path for a different number of transfer operations if depending on which threshold the transfer data time for the path satisfies is different from Hatakeyama’s discussed calculation of a response time for paths.

Accordingly, claims 3, 17, and 31 provide additional grounds of patentability over the cited art.

Claims 5, 19, and 33 concern selecting one of multiple data paths to a device, and require: selecting one of multiple paths indicated as enabled to transmit data, wherein a path is indicated as enabled or disabled; for each enabled path, gathering a cumulative transfer time for all transfer operations during a measurement period through the path and a cumulative number of the transfer operations during the measurement period; and for each enabled path determining the average cumulative transfer time for the measurement period by dividing the cumulative time by the cumulative number of transfers; and indicating one of the paths as disabled if the average cumulative transfer time for the path satisfies a threshold.

The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the claim requirement that for each enabled path, gathering a cumulative transfer time for all transfer operations during a measurement period through the path and a cumulative number of the transfer operations during the measurement period. (Final Office Action, pgs. 5-6) Applicants traverse.

The cited col. 22 discusses a response time for paths that can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses using stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention gathering a cumulative number of the transfer operations during a measurement period. There is no mention of gathering the number of transfers for each path as claimed.

The Examiner cited col. 22, lines 57-64 of Hatakeyama as teaching the claim requirements that for each enabled path, determining the average cumulative transfer time for the measurement period by dividing the cumulative time by the cumulative number of transfers and indicating a path as disabled if the average cumulative transfer time for the path satisfies a threshold. (Final Office Action, pg. 6) Applicants traverse.

The cited col. 22 mentions that with the path selecting method using actual response time per unit data length, the overall response performance from the path is evaluated so an optimum path may be selected. Although the cited col. 22 discusses using information concerning an actual response time per unit data length to select an optimum path, this measured information is different from and does not teach or suggest the claimed information of the average cumulative transfer time for the measurement period by dividing the cumulative time by the cumulative number of transfers. There is no mention in the cited col. 22 of determining path performance based on dividing a cumulative time by the number of transfers. Instead, the cited col. 22 discusses using the response time per unit data length, not number of transfers as claimed. Moreover, nowhere does the cited col. 22 anywhere teach or suggest indicating a path as disabled if the average cumulative transfer time for the path satisfies the threshold.

Applicants submit that the cited Hatakeyama's discussion of using an actual response time per unit data length to select an optimum path does not teach or suggest the claim requirement of gathering a cumulative number of the transfer operations during a measurement period. If the Examiner maintains the rejection of this claim, Applicants request that the Examiner specifically address the Applicants above argument that the cited col. 22 does not

teach or suggest gathering the number of transfers for each path or the information of the average cumulative transfer time by dividing the cumulative time by the cumulative number of transfers.

Accordingly, amended claims 5, 19, and 33 provide additional grounds of patentability over the cited art.

Claims 6, 20, and 34 depend from claims 5, 19, and 33. The Examiner cited col. 23, lines 14-19 of Hatakeyama as teaching the claim requirements that the measurement period comprises a number of transfer operations for all paths, wherein the determination to disable paths occurs after the number of transfer operations in the measurement period has occurred. (Final Office Action, pg. 6) Applicants note that the Examiner cited this same section of Hatakeyama in the previous office action. Applicants traverse.

The cited col. 23 mentions that as the number of nodes and path patterns to be selected grow, the amount of calculation time for estimating an optimum path increases, but the algorithm allows estimation with a relatively small amount of calculation despite increased complexity. This discussion of the scalability of the discussed algorithm nowhere teaches or suggests the claim requirement that a measurement period comprises a number of transfer operations for all paths. Instead, the cited col. 23 mentions that the algorithm operation time increases as complexity of the network increases. Applicants submit that this cited col. 23 does not teach, suggest, or concern the claim requirements that the measurement period comprises a number of transfer operations. Further, nowhere does the cited col. 23 anywhere teach or suggest the claim requirement that the determination to disable paths occurs after the number of transfer operations in the measurement period has occurred.

The Examiner cited col. 23, lines 20-26 of Hatakeyama as teaching the claim requirement of starting another measurement period to gather transfer time data after determining paths to disable. (Final Office Action, pg. 6)

The cited col. 23 mentions that with the algorithm it is sufficient to calculate a difference of an estimation individual, which occurs due to a network environment change, and that it does not require performing a calculation based on the entire environmental data each time a path is selected.

Nowhere does the cited col. 23 anywhere teach, suggest or mention the claim requirement of starting another measurement period to gather transfer time data after determining

paths to disable. Instead, the cited col. 23 mentions that the calculation does not have to occur each time a path is selected.

If the Examiner maintains this rejection, Applicants request that the Examiner specifically show where the cited art teaches determination to disable paths occurs after the number of transfer operations in the measurement period has occurred and starting another measurement period to gather transfer time data after determining paths to disable.

Accordingly, claims 6, 20, and 34 provide additional grounds of patentability over the cited art.

Claims 7, 21, and 35 depend from claims 1, 15, and 29 and further require that the transfer time data is gathered by path and transfer size, and wherein the average cumulative transfer time is calculated for each enabled path and for at least one transfer size. The Examiner cited col. 22, lines 40-56 as teaching the additional requirements of these claims. (Final Office Action, pg. 6) Applicants note that the Examiner cited this same section of Hatakeyama in the previous office action. Applicants traverse for the following reasons.

As discussed, the cited col. 22 discusses a response time for paths that can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention that transfer time data is gathered by path and transfer size, and that the average cumulative transfer time is calculated for each enabled path and for at least one transfer size. Instead, the cited col. 22 discusses measuring a response time per unit data length per path, but nowhere suggests or mentions gathering transfer time data by path and transfer size as claimed.

If the Examiner maintains this rejection, Applicants request that the Examiner specifically show where the cited art teaches the claim requirement that transfer time data is gathered by path and transfer size, and that the average cumulative transfer time is calculated for each enabled path and for at least one transfer size.

Accordingly, claims 7, 21, and 35 provide additional grounds of patentability over the cited art.

Claims 8, 22, and 36 depend from claims 7, 21, and 35 and further require that the measurement period comprises a number of transfer operations for all paths for a transfer size, wherein the determination to disable paths for a transfer size occurs after the number of transfer



operations in the measurement period has occurred, and further comprising starting another measurement period to gather transfer time data for the transfer size after determining paths to disable for the transfer size.

The Examiner cited col. 14, lines 54-64 of Hatakeyama as teaching the claim requirement that the measurement period comprises a number of transfer operations for all paths for a transfer size, wherein the determination to disable paths for a transfer size occurs after the number of transfer operations in the measurement period has occurred. (Final Office Action, pg. 6) Applicants note that the Examiner cited this same section of Hatakeyama in the previous office action. Applicants traverse.

The cited col. 14 mentions that the estimated response time for each of the paths is obtained based on the estimation individual and actual response times. A path calculating unit knows at least one of the possible available paths and collect the information of one available path.

Nowhere does this cited col. 14 anywhere teach or mention the claim requirement that the measurement period comprises a number of transfer operations for all paths for a transfer size, wherein the determination to disable paths for a transfer size occurs after the number of transfer operations in the measurement period has occurred. There is no mention in the cited col. 14 that the measurement period comprises a number of transfer operations for determining to disable paths for a transfer size.

If the Examiner maintains this rejection, Applicants request that the Examiner specifically show where the cited art teaches the claim requirement that the measurement period comprises a number of transfer operations for determining to disable paths for a transfer size.

Accordingly, claims 8, 22, and 36 provide additional grounds of patentability over the cited art.

Claims 9, 23, and 37 depend from claims 5, 19, and 33 and further require that the transfer time is measured from the time the transfer is sent to the device to the time a response is received from the device indicating that the transfer completed, further comprising adding the transfer time for a transfer transmitted down the path to the cumulative transfer time for the path. The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the additional requirements of these claims. (Final Office Action, pg. 7) Applicants traverse for the following reasons.

As discussed, the cited col. 22 mentions that a response time for paths can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention maintaining a cumulative transfer time for a path. Instead, the cited col. 22 discusses a response time per unit data length, but does not mention or suggest a cumulative transfer time for a path.

Accordingly, claims 9, 22, and 37 provide additional grounds of patentability over the cited art.

Claims 10, 24, and 38 depend from claims 5, 19, and 33.

The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the claim requirement that for each enabled path, a best average transfer time is determined from the average cumulative transfer times for all paths. (Final Office Action, pg. 7) Applicants note that the Examiner cited this same section of Hatakeyama in the previous office action. Applicants traverse.

As discussed, the cited col. 22 discusses that a response time for paths can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach or mention determining a best average transfer time from the average cumulative transfer times for all paths.

The Examiner cited col. 11, lines 48-59, also cited in the previous office action, as teaching the claim requirement that determining whether the average cumulative transfer time for one path satisfies the threshold comprises determining whether the average cumulative transfer time for the path exceeds the best average transfer time by a percentage amount. (Final Office Action, pg. 7) Applicants traverse.

The cited col. 11 mentions that if an actual response time matches an estimated response time, the degree of fitness becomes "1". The degree of fitness is defined as a degree for determining how accurately the response time of a service can be estimated. (Col. 11, lines 16-20). A degree of fitness closer to one means that the estimation individual has higher genes. Applicants submit that this cited degree of fitness does not concern nor suggest the claim requirement of determining whether the average cumulative transfer time for the path exceeds the best average transfer time by a percentage amount.

Accordingly, claims 10, 24, and 38 provide additional grounds of patentability over the cited art.

Claims 11, 25, and 39 depend from claims 10, 24, and 38 and further require that determining whether the average cumulative transfer time satisfies the threshold further comprises disabling the path for a first number of transfer operations if the average cumulative transfer time for the path exceeds the best average transfer time by a first percentage amount and disabling the path for a second number of transfer operations if the average cumulative transfer time for the path exceeds the best average transfer time by a second percentage amount. The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the additional requirements of these claims. (Final Office Action, pg. 7). Applicants traverse for the following reasons.

As discussed, the cited col. 22 discusses that a response time for paths can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention the claim requirements of disabling the path for a first number of transfer operations if the average cumulative transfer time for the path exceeds the best average transfer time by a first percentage amount and disabling the path for a second number of transfer operations if the average cumulative transfer time for the path exceeds the best average transfer time by a second percentage amount. In the cited col. 22 there is no mention of disabling paths, nor considering best average transfer times in deciding when to disable paths.

Accordingly, claims 11, 25, and 39 provide additional grounds of patentability over the cited art.

Amended claims 13, 27, and 41 depend from claims 11, 25, and 39 and further require that transfer time data is gathered by path and a size of an update, wherein a path is disabled for a given update size and wherein the path is capable of being enabled for at least one other update size.

Applicants amended these claims to change the first instance of the “update” element to “an update”.<sup>1</sup>

The Examiner cited pg. 20, para. 266 of Bare as teaching the additional requirements of these claims. (Final Office Action, pg. 8). Applicants traverse for the following reasons.

The cited pg. 20 mentions that when a switch port receives a cost packet it updates its tables and sends out an acknowledgment. To update its tables, the switch will first add the outbound queue cost for the port it received the packet on to the switch referenced in the packet. The cost information is then used to update the switch cost table.

Although the cited pg. 20 mentions updating a table with a queue cost, nowhere does the cited pg. 20 anywhere teach, suggest or mention that transfer time data is gathered by path and a size of the update, wherein a path is disabled for a given update size and wherein the path is capable of being enabled for at least one other update size. These specific claim requirements are nowhere mentioned or suggested in the cited pg. 20.

Accordingly, claims 13, 27, and 41 provide additional grounds of patentability over the cited art.

Applicants added claims 43, 44, and 45 that depend from claims 1, 15, and 29 and further require that the threshold is satisfied if a percentage of a first average transfer time for the given path exceeds second average transfer time.

The additional requirements of these claims are disclosed in the Specification at pgs. 10-11 and FIG. 5.

Applicants submit that these added claims are patentable over the cited art because they depend from one of claims 1, 15, and 29, which are patentable over the cited art for the reasons discussed above and because the additional requirements of these claims in combination with the base claims provides further grounds of patentability over the cited art.

#### Conclusion

For all the above reasons, Applicant submits that the pending claims 1-3, 5-17, 19-31, and 33-45 are patentable over the art of record. Applicants submit herewith the claim and RCE fees. Nonetheless, should any additional fees be required, please charge Deposit Account No. 09-0466.

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The attorney of record invites the Examiner to contact him at (310) 553-7977 if the Examiner believes such contact would advance the prosecution of the case.

Dated: October 16, 2006

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